

RULES AND PUBLIC POLICY COMMITTEE

DATE: May 11, 2010

CALLED TO ORDER: 5:33 p.m.

ADJOURNED: 8:32 p.m.

ATTENDANCE

ATTENDING MEMBERS

Robert Lutz, Chairman
Bob Cockrum
Monroe Gray
Angela Mansfield
Michael McQuillen
Angel Rivera
Joanne Sanders
Ryan Vaughn

ABSENT MEMBERS

AGENDA

PROPOSAL NO. 131, 2010 - authorizes the transfer of the waterworks and the sewage works of the City of Indianapolis to Citizens Energy Group

"Do Pass As Amended"

Vote: 5-3

PROPOSAL NO. 132, 2010 - authorizes the issuance and sale of revenue bonds to procure funds to be applied to the costs of the construction, renovation, rehabilitation and installation of improvements to the public ways, including roads, streets, alleys, trails, sidewalks and other public facilities, appropriating the proceeds derived from the sale of such bonds, modifying the amount of payments in lieu of taxes payable by the sanitary district

"Do Pass As Amended"

Vote: 5-3

RULES AND PUBLIC POLICY COMMITTEE

The Rules and Public Policy Committee of the City-County Council met on Tuesday, May 11, 2010. Chairman Robert Lutz called the meeting to order at 5:33 p.m. with the following members present: Bob Cockrum, Monroe Gray, Michael McQuillen, Joanne Sanders and Ryan Vaughn. Angela Mansfield and Angel Rivera arrived shortly thereafter. Councillors Dane Mahern, Brian Mahern, Janice McHenry, Jackie Nytes and Barbara Malone were also in attendance. General Counsel Robert Elrod and Chief Financial Officer James Steele represented Council staff.

Chairman Lutz asked all Councillors to introduce themselves and indicate which portion of the County they represent.

PROPOSAL NO. 131, 2010 - authorizes the transfer of the waterworks and the sewage works of the City of Indianapolis to Citizens Energy Group

Councillor Sanders made the following motion:

Mr. Chairman:

I respectfully move to amend Proposal No. 131 as follows:

Strike the final "WHEREAS" which reads:

~~WHEREAS, the City-County Council desires to provide a preliminary approval of the sale of the Systems to Citizens and related actions subject to the adoption of an ordinance confirming that the Definitive Agreements are consistent with the terms of the MOU and approving the execution of the Definitive Agreements (the "Approving Ordinance");~~

Amend the following section as indicated:

SECTION 1. Pursuant to IC 36-3-4-18(a)(6), there is hereby created a committee of the City-County Council to be called the "Utility Transfer Oversight Committee" which shall have as its purpose to review the Definitive Agreements, to consider the Approving Ordinance, and to recommend or reject passage of an approving Ordinance to the Full Council. The President of the City-County Council shall appoint six (6) councillors to the committee and the Minority Leader shall appoint five (5) councillors to the committee.

Amend the following section as indicated:

SECTION 2. The City-County Council hereby tentatively approves the MOU, subject to the satisfaction of the terms and conditions set forth in this ordinance, the final agreement, the Interlocal Agreements, and the MOU and subject to all required governmental approvals. ~~This ordinance is deemed to be a resolution for purposes of IC 5-22-22-10 and IC 36-1-11-8.~~

Strike Sections 3-6.

Strike Section 8.

Strike:
Exhibit B
Interlocal Agreements

Councillor Sanders added that semantically speaking they can do without the "Whereas" language. Councillor Vaughn stated that for purposes of discussion on the amendment, he will second the motion.

Councillor Vaughn said that the first paragraph Councillor Sanders is asking to be stricken is actually language that he amended into the proposal at the last meeting. He said that the language that he added in essence states that the Council is providing preliminary approval of the sale, subject to confirmation of the definitive agreement consistent to the memorandum of understanding (MOU). He said that to strike that language as per this amendment would actually make it less restrictive on negotiations that go forward. He said that the language he added more narrowly tailors the discussion from this point forward. Councillor Vaughn stated that from other discussion with Councillor Sanders, he understands that her desire to strike the interlocal agreements is based on her presumption that if this proposal passes with those interlocal agreements included, then in fact, the deal is done. He said that what he drafted and the committee amended at the last meeting makes those agreements subject to the approving ordinance.

Councillor Sanders said that she has concerns about the interlocal agreements, especially since they are essentially a part of what constitutes an irrevocable action. She said that she realizes some of this is hinged on the approving ordinance, but she is still concerned that all this language could be re-interpreted and result in a final vote of the Council.

[Clerk's Note: Councillor Mansfield arrived at 5:39 p.m.]

Chairman Lutz stated that there is no irrevocable action until closing and until the approving ordinance is adopted by the full Council. Councillor Vaughn added that there is no attempt to do something underhanded and he has confirmed with the city administration that it is their desire and willingness to have final Council approval on all aspects of the definitive agreement, including interlocal agreements. He said that this proposal only grants the administration the authority to enter into final negotiations within the terms of the MOU. He said that if the proposal is amended as per Councillor Sanders' suggestion, those terms are no longer defined.

Councillor B. Mahern asked if the administration is not already bound by the MOU by virtue of their signatures to that document. Councillor Vaughn said that an MOU is not a contract or agreement and therefore is not a legally binding document. Councillor B. Mahern asked why they are waiting until the eleventh hour to provide amendments that give the proposal more teeth that it did not presumably have when introduced. Councillor Vaughn said that his amendment was not an eleventh-hour amendment, and it was approved last week after several weeks of discussion. He said that there is

historical precedent for handling the transaction this way. When the city acquired the water company from a private company several years ago, there was initially an ordinance authorizing the Mayor's Office to engage in negotiations for the purchase of the utility. Subsequent to that was an ordinance approving the definitive agreement. Councillor Vaughn said that they have tried, then, to mirror that past precedent and asked the Mayor's Office to come back after negotiating according to the terms of the MOU with a definitive agreement for final approval. Councillor B. Mahern said that this deal has been talked about for many months, and in several committee meetings. The proposal was introduced with a certain intention, and he asked what has occurred since that time of introduction to cause the need for this amendment. Councillor Vaughn said that he will accept responsibility for that, as it was due to a misunderstanding in communication between himself and the Mayor's Office. He said that when they approached him a few months ago, they asked about the process and if the Council needed the final word-for-word agreement to approve, and at that time, he responded in the negative, thinking the Council did not need to approve each and every minute detail of negotiated contracts by the city, such as with the budget, which is subject to technical amendments after passage. He clarified, however, that he was envisioning something more concrete than a simple MOU, which is less than binding, and realized that he was incorrect in his answer to the administration and that the Council would indeed need a definitive agreement to approve. He said that after discussions with Minority Leader Sanders, he realized the miscommunication and his assumption mistake, and after subsequent discussions with the administration, amendments were then proposed. Councillor B. Mahern asked if the administration was already in the midst of negotiations when the proposal was introduced and what the net effect will be in those negotiations if this proposal passes. He asked under what authority they can negotiate a final agreement without the passage of this proposal. Chairman Lutz said that the local governance system includes a very strong Mayor's Office, and an MOU is a road map and understanding of how they get from one place to another. He said that even if the Mayor's Office had gone ahead and signed definitive agreements, if this Council did not then approve those agreements, he does not think the transaction would be binding and legal. Chris Cotterill, Chief of Staff, Mayor's Office, said that the ordinance did start out giving the executive branch the rights to move forward with the definitive agreement without a later Council approval, even though it would still be subject to the Indiana Utility Regulatory Commission's (IURC) approval. He said that the language added to the proposal at the last meeting to add the final approval of an adopting ordinance and that last "Whereas" statement does not change most of the structure of the originally introduced proposal. He said that based on discussions with Citizens Energy Group (CEG), they agreed that it would be helpful to both parties to see that they are in alignment with the Council's wishes. In keeping those details in the ordinance to be more restrictive, rather than less restrictive, it will help them work toward a consistent definitive agreement, assuming this proposal passes.

General Counsel Robert Elrod stated that in corporate acquisition law, this is not an unusual way to proceed with this type of transaction. He said that it is very common for some understanding to be reached about the general terms of the transaction between

the seller and buyer, and then more details are negotiated and finalized once the original terms are set. He said that it is not unusual for an acquisition of this size to take 60 to 90 days in order to complete the process and work out all the intricate details. He said that lawyers and other representatives will spend significant time after the approval of the MOU, or letter of intent, to work out those details. Councillor B. Mahern asked if by the action of approving this proposal, the Council would be signing onto the MOU as a third party, and agreeing to later sign onto the final agreement. He asked if this is a fair characterization. Chairman Lutz said that it is not necessarily an unfair characterization, but it is not complete. He said this proposal simply agrees to the city continuing to negotiate within the parameters of the MOU, but if the Council does not agree with the terms outlined in the definitive agreement, they can choose not to approve it.

[Clerk's Note: Councillor Rivera arrived at 5:49 p.m.]

Councillor B. Mahern said that there are a number of outstanding informational requests made by himself, the minority leader, and others. He said that at the time the parties signed the MOU, they seemed to have access to quite a bit of information, but now the Council is being asked in essence to sign onto the MOU, yet they have not received all the information they need to make an informed decision. He said that one of the reasons he is attending tonight's meeting, as a non-member of the committee, is to raise this issue and express his concerns before the matter gets to the Council floor next Monday. He said that even if the Council will later approve the final agreement, there is still some mark of approval given to some aspects of this transaction in principle by passing this proposal and signing onto the MOU. Chairman Lutz said that the parties themselves did not have all the details at the time they signed the MOU, and they continue to negotiate on an ongoing basis. He said that this is not unusual for this type of transaction. He added that he believes there has been some attempt by the administration to put together the documents Councillors have requested. Mr. Cotterill said that he has received a lengthy document request from Minority Leader Sanders, and in that request, it asks for a production of documents ongoing. Given the scope of the challenge of responding to that request, they have created a website where they are posting over a couple hundred documents, and they hope to have that site updated and reviewed no later than Friday. He said that several hundred documents are already on the website, and they have tried to appear at all of these meetings and the 31 public forums to verbally answer questions, as well as holding one-on-one sessions with Councillors at their request. He said at the last meeting, there was one outstanding request from Councillor Mansfield that he hopes they have since satisfied. He asked Councillor B. Mahern to contact him if he has an outstanding request that has not been addressed. Councillor B. Mahern said that he was not aware of the website for these documents. Mr. Cotterill said that this is something new and this is the first time he has mentioned it. Councillor B. Mahern said that it is unfortunate that he did not know about the website and the availability of those documents before this meeting, as he had to make preparations to attend this meeting and take part in the discussion, and it would have been helpful to review those documents before attending this evening. He said

that asking this committee to give a recommendation to the Council without having access to those documents is unfortunate. He said that he does not know how the committee can accurately consider this without the information to which others are privy.

Councillor Sanders said that the website is also news to her and it is very difficult to assess what is before the committee, and that is why she submitted her amendment. She said that it concerns her that Section 3 says the Council approves substantially the final form of the interlocal agreements. This amendment could possibly alleviate some of Councillor Mahern's concerns, because it removes language she believes would tie the Council's hands. At the very least, if the committee votes in support of this, it would be tacit agreement for the final agreement, which she is not prepared to give at this time. She moved, seconded by Councillor Vaughn, to call the question on the motion to "Amend" Proposal No. 131, 2010.

Mr. Elrod clarified that as it is written, the amendment does not have all the language included in Section 2 as amended at the last meeting and a couple of lines are missing. He further asked if the reference to striking Section 8 refers to the originally introduced Section 8, or the new Section 8 as defined through amendment at the last meeting. Councillor Sanders said that this amendment was drafted from the original ordinance, and does not take into consideration amendments that passed at the last meeting. She said that the Section 8 she is referring to was from the original ordinance.

The motion to call the question carried by a vote of 7-1, with Chairman Lutz casting the negative vote. Councillor Sanders' motion to "Amend" Proposal No. 131, 2010 failed by a vote of 3-5, with Councillors Cockrum, Lutz, McQuillen, Rivera and Vaughn casting the negative votes.

Councillor Gray asked how Councillors can be expected to decipher all the information and vote on this issue on Monday if they will not have access to the information until Friday. Mr. Cotterill said that if this was more than a preliminary proposal and there was not going to be another committee established to review and approve final agreements, then he would understand the concern. He said that they are trying to be responsive, but are frankly still producing some of the documents requested. He said, however, that there will still be another month or two before any final agreements are approved on this transaction. Councillor Gray asked if Mr. Cotterill perceives that there will ever be a time that they will see a completed document with all the information in one place. Mr. Cotterill said that the definitive agreement would be such a document. Councillor Gray asked if the Council will have time to review this document before voting on it. Mr. Cotterill responded in the affirmative and said that it is the administration's desire to move forward with negotiations for the definitive agreement as expeditiously as possible. He said that the longer they delay, the citizens are not getting the full benefit, and he expects the final form to be available in early June for lengthy review, with a public meeting being held even in advance of that for a sense of the citizens' perspective on the contract.

Councillor Mansfield said that she has made requests several times and was told in meetings the information would be provided and then never heard anything. She said that it would have been helpful to know about the website earlier, as the response at the last meeting was that a document she requested was available online. She said that if someone would at least acknowledge the requests and give Councillors a timeline of when they could expect to see the documents, that would be helpful. She said that she did request the infrastructure needs map and did receive a hard copy of that, but because of the color scheme and the streets not being identified, it was difficult to figure out where some of these projects were located. She asked if the list of projects she received via e-mail are the same as represented on the map. Mr. Cotterill responded in the affirmative. Councillor Mansfield said that if that is the case, then there seems to be some projects missing, such as sidewalks along Michigan Road.

Councillor Mansfield stated that in *The Indianapolis Star* last week, there was an article about the City of Lawrence, and there was a quote from Mayor Paul Ricketts, who seems to think the city of Indianapolis is going to help subsidize a new wastewater facility for Lawrence. Mr. Cotterill said that he has had discussions with Mayor Ricketts, who has presented a proposal to build a wastewater treatment facility that would position the city of Indianapolis to spend less money on their combined sewer overflow (CSO) build-out. He said that Mayor Ricketts did ask what kind of money the city of Indianapolis might be willing to put into this project. He said that his answer to Mr. Ricketts was that given the current financial constraints and infrastructure needs, he did not see how it would be feasible or prudent for Indianapolis to make any type of investment into such a project at this time. Councillor Mansfield asked if this is then just a pipe dream for Mr. Ricketts. Mr. Cotterill said that would be accurate, as he does not yet understand the entire project, and it is very far down the road. He said that at this time, however, he does not foresee any way the city could invest. He said that if there would be cost savings to the city as a result, they could possibly look at it in more detail in the future, but he does not see any investment in that project forthcoming any time soon.

Councillor Mansfield said that in looking at the documents and reviewing all of the Water Company property and property connected to the wastewater treatment facilities, some new concerns arose that she found alarming. She said that early in Mayor Ballard's administration, he voiced an opinion about selling off some of the Parks land. She said that in looking more closely at this deal, she thinks he is doing just that. She said that the Canal Towpath has always been considered a part of the Waterworks' property, and Pagues Run trail surrounds the wastewater basin. She said that these properties are very valuable to citizens and she does not see any reference in these documents regarding those assets. Mr. Cotterill said that he would not say that Mayor Ballard is selling off Parks. He added that these properties mentioned have been a part of Waterworks and are indeed valuable to the community. He said that these properties are under discussion right now, and those parts that are absolutely integral to the Waterworks system or wastewater treatment plants should be transferred along with the other assets. He said that the towpath and trail were under the care of NiSource

(previous owner of the water utility) and subsequently, the Indianapolis Water Company (IWC), and there was no problem with access by the public. They are having ongoing discussions about whether they would be fine under the care of CEG going forward. He said that they are considering questions like whether the city would benefit from ratepayers paying for the cost to maintain those assets versus the taxpayers, and the city has made it very clear that there has to be total protection for access by the public on those properties as there is today. He said that this issue will be addressed in the definitive agreement. Councillor Mansfield referred to the headquarters for IWC on Waterway Boulevard and said that she understands that Indiana University-Purdue University of Indianapolis (IUPUI) approached IWC several years ago, and apparently, that property has a lot more value with the headquarters building demolished. She said that she is concerned that this is part of the carrot dangling in front of this deal. She said that it seems they are giving up some valuable assets and losing a lot of control, and she wonders if there is another mechanism that could be put in place to avoid giving up control of these assets. Mr. Cotterill said that IWC's headquarters is directly addressed in the MOU and was recognized as an asset of high value. He said that there are a couple of problems with the city keeping control of that facility, including pipes running under the building to the wastewater facility and a large garage that houses maintenance trucks. He said that he toured the facility with Carey Lykins, president and chief executive officer of CEG, and representatives of Veolia and was impressed by the importance of that facility to the ongoing operations of the water company. They are still discussing whether it would be more beneficial for the city to retain that asset or to allow a period of transition, where CEG takes possession of the property until they can arrange for transfer of those functions into existing CEG facilities, and then have the property revert back to the city. He said that this property is recognized as being part of the corridor of economic development, and that is why it is specifically listed as an excluded asset in the MOU. Councillor Mansfield said that she is really referring to all the assets, and wondered if the city could not, instead of selling them all off, structure the deal in some way to capture the synergies with some sort of umbrella management contract or lease without giving up valuable resources. She said that water is a natural resource and not a purchased utility like gas, and therefore has a different kind of value. Mr. Cotterill said that this is one of the factors of finality that is one of the keys to the Mayor's proposal. He said that the transfer of assets puts them into a non-profit charitable trust and helps to de-politicize the administration of the utilities and run them in the best interest of the citizens. He said that CEG's governance model helps to insure protection and provides checks and balances to protect those assets. He said that CEG has a positive management history in this city. He added that although it would not be unreasonable to have an operating agreement, they have moved past that concept to put these assets into a public charitable trust.

Councillor Mansfield said that at the last meeting, she raised the concern that the IURC receives a certain revenue stream from utilities, and the city currently has to take their water cases to them. However, the IURC does not currently receive any revenue from the sewer rates, and she has concerns about future revenues for the IURC possibly affecting their objectivity in approving this transfer. She said that Mr. Lykins did respond

to her concerns and it might be helpful for him to share that same information with the other committee members and the public. She said that if this deal goes through, the state will oversee a new annual revenue of .5%, which has nothing to do with whether or not the city has any rate cases coming before the IURC. She said that she is still very concerned that the IURC would lose objectivity in this deal, because they have everything to gain. She said that the Waterworks Board was denied counsel in this transaction, as well, and this is troubling to her as it seems objectivity is missing. Mr. Cotterill said that the city's financial position is more certain than the state's, and because the state is more volatile given the economy, it is accurate to say that they are looking for ways to fund things. He said that all state entities charge user fees and oversight costs, including the IURC, the Bureau of Motor Vehicles, and many others. Mr. Lykins said that it is correct that the IURC assesses fees on all those companies it regulates to defer the cost of regulation, and the type of fee varies according to the legal structure of the utility being regulated. He said that CEG is currently regulated on a per case fee, and are billed as to cost. He said that he believes that one of the ways the IWC pays is that the commission assesses a modest fee each time it approves a bond issuance, which is based on the volume of bonds. The other form of fee collection is to assess an annual fee against a utility company's revenues, and he believes it is .15%, and not .5% as indicated by Councillor Mansfield. He said that the way the IURC would assess regulatory fees against CEG if they take control of the wastewater system would depend upon the legal structure under which the IURC classified the utility.

Councillor Mansfield said that an article in today's *Indianapolis Star* referenced how the payment in lieu of taxes (PILOT) would be earmarked for spending on streets and sidewalks, and she was dismayed that only \$3.6 million of that \$140 million would be going toward sidewalks. She said that given the need for sidewalks, she finds that amount to be extremely insufficient, and she could use that amount in her district alone. Mr. Cotterill said that there is no question that more than \$140 million is needed to help address this city's infrastructure needs. He said that they hope to bring a definitive agreement, if this proposal passes tonight, that will lead to another \$262 million payment by CEG and a freeing up of the wastewater fund to unleash even more money for sidewalks, abandoned homes and other priorities that the Mayor would like to see addressed. He said that \$140 million, though gigantic in comparison to what the city has invested in the past, is still not enough to address all the needs. Councillor Mansfield asked what the city will do 20 years from now when the streets and sidewalks are back in the condition they are in now. She said that she does not see this as a long-term solution. Mr. Cotterill said that this is definitely not the end-all and be-all solution they would like, and they still need to have significant adult conversations about future infrastructure needs and appropriately funding infrastructure. He said that these conversations with the State Legislature need to include discussion regarding those who live outside the county, who use the roads and public safety services within the county, yet do not contribute to their funding. He said that this transaction, however, will make a significant dent in the infrastructure deficit, while curbing the increase of rates and raising standards in neighborhoods. He said that this administration is working in

every way to identify savings and efficiencies to avoid tax increases while still meeting the needs of the community.

Chairman Lutz stated that some of the concerns Councillor Mansfield is raising underscore the fact that this proposal is not a definitive agreement, and once this is approved, if it is approved, it will not be the end of the discussion. Negotiations are ongoing and there are still questions to be answered. That is one of the reasons the ordinance was amended to require that the definitive agreement come back before the Council for final review and further recommendations.

Councillor Vaughn said that it is appropriate for the viewing public to distinguish between what they are doing here versus their ongoing obligations. He said that the city has identified through an audit \$1.1 billion in deferred maintenance costs, meaning maintenance that failed to be addressed for a number of years. He said that annual streets and sidewalk obligations further compound that problem. He said that no one is suggesting that executing this deal solves all of those problems. It does not. He said that even in the best years, the city still needed \$17 million dedicated to streets and sidewalks, but now they are cutting that \$1.1 billion deficit almost in half instead of adding to it. He said that this will not solve all of the deferred maintenance problems, but takes a step in the right direction, which no administration has previously taken, while continuing to address annual projects and needs. He said that times are difficult and a lot of cities are facing the same problems across the country.

Councillor Vaughn moved, seconded by Councillor McQuillen, to send Proposal No. 131, 2010 to the full Council with a "Do Pass As Amended" (as amended at the previous meeting) recommendation.

Councillor Mansfield said that she can appreciate why the city needs infrastructure funds coming in, but she is concerned that with this transaction, they are creating a regressive taxing system, and people who have less income will be paying a greater percentage of their income for a necessary resource. She said that this comes back to the property tax issue, where people only paid a few hundred dollars for many years on properties that were worth thousands and thousands of dollars. The state then instituted this 1% cap on property taxes, which she does not think was the smartest thing to do and that rate is still probably the lowest in the country, which has further compounded the problem. She said that her concern is that this mechanism will affect those in the community who have less funds than others. Chairman Lutz said that many property taxpayers have received a substantial property tax relief based on those circuit breakers. Councillor Mansfield said that many of those who received relief could afford to pay a little more taxes. She said that this, however, is concerning water, which is a valuable, necessary resource that people cannot live without. In fact, it is a health violation if citizens do not have running water. Chairman Lutz said that the city had a situation where they bought a utility and promised people they would not raise rates for five years, even though, at the same time, they were highly regulated by the state and federal government with expensive mandates.

Councillor Vaughn added that if this Council does nothing with respect to this transaction, people will pay future rates that are 25% higher than they will be if they do something. Therefore, if anything, this transaction is a break for lower income residents in their rate payments. He added that if those who do not support the proposal are making the point that the deal is good, but they differ on how the money should be spent, then that is a legitimate argument. However, Councillor Mansfield cannot argue both sides and say that the deal is bad and is a regressive tax on lower income people, because if they do not do the deal, then ratpayers will pay 25% higher rates. Councillor Vaughn said that there is no way to reconcile those two statements. If the deal is done and all of the money is spent on rate savings instead of infrastructure improvements, maybe ratepayers will pay 28 to 30% less in rates. He added that if the discussion is with regards to how the money is being spent, that argument can still be made, but doing nothing will actually cost people more money. Councillor Mansfield said that she agrees these are two separate issues, but if this is such a great deal, why are they not passing the savings on to the ratepayers. Councillor Vaughn said that they are passing some of the savings on to the ratepayers. He said that not passing along the entire savings is a policy decision, and the administration and some Council members feel that this savings is better spent at this time on mitigating the problems with streets and sidewalks. Councillor Mansfield said that she feels this is where they get into the regressive tax issue. Councillor Vaughn said that he does not understand this reasoning. If they do the deal, minimize rate increases and address streets and sidewalks, how is that worse than if they do not do the deal and the ratepayers pay higher increases and do not get streets and sidewalks.

Councillor Sanders clarified that those people who think they will get a 25% decrease on existing rates are assuming incorrectly. She said that the 25% savings everyone keeps referring to is after 400% increases in rates across 30 years. She said that a 25% decrease sounds great, but it is not really a decrease. She added that the city could change the governance of IWC and put it under the Department of Public Works (DPW), with all the value engineering and savings found in sewer management by Director David Sherman. She said that Director Sherman boasts about cutting costs, but she would argue that some of that is attributable to the market and the cost of supplies being lower. If the market had not gone under, they would not be having this discussion. They instead would have sought a different tactic in providing infrastructure without selling off one of the city's most valuable assets. She said that giving up that control is a slippery slope. She said that once those properties and assets are transferred, it will be up to CEG to decide if the greenways or other facilities are an integral part of their operations and the city will no longer have a say in that decision. She said that this causes her grave concern.

Councillor Sanders said that another issue that has been bothering her for the last couple of weeks is directed specifically to Councillor Vaughn. She said that while she appreciates his candor with her regarding this transaction and working with her on several issues, everyone knows that Councillor Vaughn works for Barnes and

Thornburg law firm and she struggles with the fact that he is voting on these issues, based on the fact that his employer makes a lot of money off this deal and many other Waterworks issues. Councillor Vaughn said that CEG is represented in this deal by the Ice Miller law firm and the city is represented by Baker and Daniels. He said that the Barnes and Thornburg law firm does represent Veolia, and therefore is prohibited from representing the city as a matter of conflict of interest. He stated that there is therefore no conflict for him in voting on this matter, because the MOU simply states that there are existing agreements with those contracted entities. He said that, furthermore, he does not personally work on any of those cases for Veolia as a lawyer and never has. He said that he would be happy to provide Councillor Sanders with the legal opinion he has provided to several Democrat bloggers, which details the professional standards of conduct that he has to abide by, as well as the Council ethics analysis. He said that in his analysis, as well as review and opinion sought by others, there is absolutely no conflict. Councillor Sanders said that she would like to have a copy of the legal opinion. Councillor Vaughn agreed to provide a copy to Councillor Sanders.

Councillor B. Mahern said that there are still so many outstanding requests for information and he is looking forward to receiving that information and reviewing it, because there is still so much he does not know. He said that what he does know is that there will be \$262 million of debt that will be paid by ratepayers that will not be going toward sewage and water issues. Instead, a policy decision has been made to spend that money on sidewalks. He said that the fact remains that whether or not anyone thinks this is a good deal or not, that approach will result in higher rates than otherwise would have occurred. He added that there is an anticipation that there will be some savings to offset that, and perhaps in the forthcoming information, he will receive data that will alleviate his concerns, but he does not yet have that information. This is a fundamental change. Councillor B. Mahern said that people paid property taxes for a number of years expecting some of that to go toward sidewalks, and unfortunately not enough did. However, now they are faced with a situation where people are paying rates for an essential resource like water, and that money is going instead to sidewalks. He said that before he can be in a position to say that this concept is appropriate, he would need more information, but the debt that is being issued will be paid for by the ratepayers. He stated that putting the burden for that debt on the ratepayers of an essential resource will result in those residents with a lower income paying a higher percentage of their income. He said that this is by definition regressive. He said that he does not have to vote tonight, because he is not a member of this committee, but he does not feel like getting the information on Friday is enough time for members to review the information and make an informed vote on Monday. He said that knowing that this deal has been in the works for some time and those requests for information have been out there for some time, three days is not enough time to even sign off on the general idea. He said that even if they voted against the definitive agreement, but voted in favor of the MOU, some would say they voted for the transaction. He said that he knows there was more information available to the parties when they signed the MOU than what is available to this committee this evening, and that is a fundamental inequity. He said that the vote on this proposal should be put off for the benefit of

having more time to digest that forthcoming information. Chairman Lutz said that if the Council was voting on the definitive agreement at this point, he would agree with Councillor Mahern, but they are not.

Councillor Vaughn said that one of the hallmarks of this administration that has impressed him is the fact that they have addressed the problems of the city holistically, as opposed to myopically, narrowly focusing on one issue at a time. He said that they are working collaboratively across the departments to find solutions in the best interest of the full community. He said that this is what this transaction does, but Councillor Mahern's analysis looks at it myopically, which misses the holistic picture. He said that saying the ratepayer will not receive the entire benefit of the rate break because they are spending some of it toward streets and sidewalks is a legitimate and factually accurate statement, but it misses the holistic picture on which this administration is focused. As a matter of policy, the administration has determined that the \$1.1 billion infrastructure deficit is as pressing a need as providing a 28% rate abatement, as opposed to the 25%. He said that it is simply a matter of balancing needs across the entire county. He said that it is inaccurate to say that there is no historical precedent for spending money collected from water rates on anything other than water, as \$9 million is currently being collected annually on the wastewater PILOT and being spent on public safety.

Councillor B. Mahern said that he will wait to address the PILOT in the next proposal, but absent the PILOT, which is what this proposal is, the issuance of debt seems to be for the sole purpose of acquiring the utility. This proposal does not speak to the incremental amount of money that will be collected annually from the PILOT, which is another proposal entirely, but instead this is debt being issued that will be the obligation of the ratepayer to repay, yet will not result in a single pipe being laid or a single ounce of waste being treated. He said that as a matter of policy, Councillor Vaughn can say that he agrees with that decision, but the fact still remains that this is a long-term obligation that cannot be erased once the bonds are issued and the check is spent, even though the PILOT can be changed. He said that there is a long-term impact in terms of the debt, but a short-term impact with regard to addressing infrastructure needs. He said that this may be a big pot of money, but it will result in future obligations for ratepayers. He said it is still unclear to him regarding the total cost, and the deal was first proposed at \$425 million. They have now learned that it is \$262 million for the purchase, and then an addition of possible PILOT payments.

Councillor Rivera said that it is hard for him to understand Councillor Mahern's point of view. He said that Councillor Mahern seems to feel this is a tax because the discount is not as big as it could be long-term for ratepayers. He said that Councillor Mahern is not taking into consideration the impact on the taxpayers who are not being taxed extra because of a reduction in the ratepayer discount. Councillor Rivera said that Councillor Mahern is complaining that the amount is \$262 million and not the \$425 million originally presented. He said that from the very beginning and at every single hearing he has attended, the Council and the public have been told exactly where the \$425 million

figure came from, as a combination of the equity on the sewage company after debt is paid on the water company, the PILOT and the reserve on the bonds. He said that he is not sure where Councillor Mahern got his information, but this question was answered accurately in the very first meeting he attended and has not changed, and he cannot see how Councillor Mahern can claim that they were misled. He said that there has been a ton of information released in over 30 public hearings, where everyday citizens are allowed to ask questions. There have been briefings to four of the Council's standing committees, where both Councillors and the public can ask questions and make comments. He said that while there is a minor penalty in the discount being afforded the ratepayer, the benefit goes to taxpayers, and in Indianapolis, the ratepayers and the taxpayers are generally the same people. He added that individual citizens will probably receive an even greater benefit because some of the biggest water ratepayers are large companies or organizations. Councillor Rivera said that this is a big step forward in addressing the city's major infrastructure needs, while dropping future increases in water rates; and it does not make sense to nit-pick, when this transaction brings such positive things to the city. Councillor B. Mahern said that he does not know if he can agree with the larger points of the deal because the devil is in the details. He said that he is not asking for any more detail than CEG and the city had in developing the MOU. He said that with regard to public input at informational meetings, many of the constituents he represents cannot attend those hearings because they are too busy going from their first job to their second job just to make a decent living for their families. He said that he is not sure they even have a sense of what those rates are really going to be for the ratepayers. He said the last time this Council raised revenues in Indianapolis, there was a big debate on whether it was 65% or .65%, so the public did not clearly understand. In this case, they do not really even know what the real percentage effect is. He said that he does not know if the taxpayers will truly benefit because he does not have enough information. He said that he believes this deal has been talked about and in the works since the new administration took over, probably over several years, and delaying a vote for a couple of weeks so that Councillors can receive and review information is not asking too much. He said that if his constituents ask him if he will support this proposal, he will have to tell them he does not know if it is a good idea or not because he does not have enough information to make an informed decision, and therefore, he will have to vote against it.

Chairman Lutz called for public testimony.

Pat Andrews, vice president of the Marion County Alliance of Neighborhood Associations (MCANA), stated that their board met last Wednesday and discussed this proposal. She said that they appreciate the time Director Sherman, Mr. Cotterill, and Mr. Lykins have taken to hold public meetings, provide information and answer questions. She said that they sensed a genuine interest by all parties for public input into this process. She said that in MCANA's discussions, they broke the transaction down into various issues trying to answer the most fundamental questions. However, they could not get past the issue of potable water being a very precious commodity and valuable resource. She said that Indianapolis is blessed with this resource falling out of

the sky on an overly regular basis, and perhaps they do not appreciate it as much as they should. MCANA came to the conclusion that they cannot support the city selling its water resources. She said that she could understand a lease or operating agreement for financial benefits, but cannot support the selling of the water itself. She said that any rate savings should go to the benefit of the ratepayers, as they are paying for water and sewer service, and that is what they should get for their money. She added that she understands the need for infrastructure, but trying to pull that money out of rates that are already going to increase because of the CSO issue is not in the best interest for the long haul. She asked that the committee oppose the proposal.

Matthew Stone, citizen, said that this is the fifth or sixth meeting he has either attended or viewed on Channel 16 in the last month. He said that he has concerns about taking the \$425 million and putting it all into "dry" improvements in the city, instead of putting it toward "wet" rate savings. He added that CEG is a not-for-profit and does not have cash reserves on hand, so they will be taking out loans to pay for this, and he does not see how that will not result in higher rate increases. He said that even though there is an anti-tax fervor among the public right now, the recent township referendum approvals of funds for school buildings demonstrates that taxpayers are willing to approve reallocation of funds or increases for specific purposes if the case is made for them. He said that the improvements to the highways and roads should be paid by those who drive cars, and he has issues about where the money is going, and a separate decision should be made about where funds for infrastructure will come from.

Glenn Pratt, citizen, stated that he has extensive experience in sewage and water issues, and explained that one of the biggest fights they had with the last administration was getting septic tanks eliminated. The previous administration got 3,000 tanks eliminated in eight years, and this administration is doing 7,000 in four years, so he appreciates the efforts of this administration and already sees some positive things happening. He said that DPW has six full-time engineers overseeing the wastewater treatment plants, plus an engineering section behind them and two people in upper management. He said that the IWC, however, has one technical person and one manager. He suggested that they need to move the water program into DPW, where it would have adequate engineering staff to get it straightened out. He said that this administration has saved over \$200 million and the final product is a better product. He said that cost savings could be further achieved by integrating all these functions under DPW, so that they tear up the streets, put in pipes and make sewer adjustments, and then pave the streets, integrating all activities by doing it once and doing it right. He said that it has been reported that the rates will be cheaper in the hands of a not-for-profit than in the hands of another company, but CEG will not get any cheaper rates than the city would get. He said that he is concerned about the management structure, and the water and wastewater systems need high-level full-time personnel with knowledge about water and sewage, not consultants. He said that to take on water and wastewater at the same time is horrendous, and they should think about moving one utility over at a time. Mr. Pratt said that he also has some concerns about CEG's not-for-profit activities and what might happen to the utilities if any of these entities go

bankrupt. He said that the IURC does not get involved in minor issues, which are handled more adequately and responsively on a local government level. He said that the current CEG board is comprised of people with no technical knowledge or experience regarding water or sewage, and he would like to see the board expanded to include individuals with practical real-world experience in these areas.

Clark Kahlo, citizen, stated that he is skeptical of the projected synergies, and said that he is used to calling government departments to get resolutions to issues, and is not sure the new model would provide as much access to the process of public input and desires of citizens. He said that the parks land issue brought up by Councillor Mansfield is very important, and if this land is transferred over, the city will no longer have any legal say in what happens to that property. He said that this needs to be looked at more closely.

Kerwin Olson, program director for Citizens Action Coalition (CAC), thanked Deputy Mayor Michael Huber and Aaron Johnson from CEG for the time they have devoted to answering his questions. He said that it is difficult to have a position on this matter when there is still so much information not available to even Councillors. He said that there is clearly information available, but it needs to be disclosed to the public so that they can formulate a position and raise questions. He said that he agrees that the last "Whereas" statement should be stricken from the proposal, as it eliminates the authority of the Council. He added that the Council needs to have the authority to determine that the definitive agreement is consistent with the MOU. He said that he also has concerns about the transfer of valuable real estate. There is no detail in the MOU, which is essentially a worthless document. While there is some understanding that there is no discerning between a ratepayer and a taxpayer, the difference is that a ratepayer is paying for the delivery of a utility service. Rate increases are hidden tax increases, and the most regressive tax increase that can be issued on the public. To take \$262 million and another \$65 million in the wastewater fund in utility ratepayer dollars and use it for non-utility services is not right. He said that ratepayers do not pay for sidewalks, the demolition of homes, and streets with their utility bills and should not be used as economic development tools. He said that CAC has no position on this deal because they do not have all the information. He asked what the hurry is to expedite this process and added that this should be the last conversation and should only take place after a review by the IURC and other regulatory bodies. He asked the committee to reject the proposal.

Councillor Vaughn said that there are several thousand pages of information regarding this transaction on the city's website, which has been there for some time, and he asked Mr. Cotterill to give the new website's address and any other information that will help the public and Councillors find the information they need. He added that the IURC will not engage in an eight to ten-month debate on this issue, accepting public testimony and input and answering questions. He added that the IURC would probably not waste their time considering evidence for a transaction that the city did not first say they were interested in doing. He stated that this is essentially all that this proposal is doing. Mr.

Olson said that the IURC continually states that they are an arm of the legislative body and acts under the will of the General Assembly. He said that if this body sends over an ordinance approving the MOU and interlocal agreements, the IURC would view this as a legislative mandate. He said that this body needs to look at the details of the transaction before saying they want to move forward with it and asking for the IURC's approval. Councillor Vaughn said that this Council is not the General Assembly, and the IURC does not take direction from this particular legislative body. This particular legislative body, the City-County Council, works in concert with the Mayor's Office and frequently extends efforts to work collaboratively with the public, setting up several public hearings and the formation of a separate committee to review the definitive agreement. Mr. Cotterill stated that the new website which should be up to date by Friday is www.indy.gov/IAC and there is already a lot of information specifically on this transaction at www.indy.gov/utilities.

Councillor Rivera stated that people have been suggesting that there was a deliberate attempt to hold back information. He asked Mr. Cotterill if he is aware of any attempt to withhold information from the public or from members of the minority caucus. Mr. Cotterill responded in the negative.

Councillor Sanders asked if all the items in her letter are on the website. Mr. Cotterill said that many of them are on the website, but not all of them are there yet. He said that Councillor Sanders' list was more expansive than the documents they had available, which is why it has taken them longer to respond to it. Councillor Sanders said that the administration should have responded to her letter of request telling her that some of these documents were available on the website instead of just saying they were working on it. Mr. Cotterill apologized and said that he should have referred her to the website while she was waiting for them to provide her with the complete list of documents.

Councillor B. Mahern said that he was not implying that there were any deliberate attempts by the administration to withhold information, but his concern was that the process is moving too quickly and the attempt is to press the process forward in the absence of information. He would like to see the process slow down, because with each question asked, it seems a new question arises. He said that rushing this process will produce ramifications the Council may not have considered. He asked if the approval of the MOU would be the basis on which the IURC will take action on this matter. Mr. Cotterill said that he does not anticipate the IURC will take any action until a definitive agreement is approved, and then a separate filing will be made to the IURC. He said that the IWC did, in the interest of full disclosure, give the IURC notice of the MOU within the realm of the rate case still pending before that body. Councillor B. Mahern asked if Mr. Cotterill is saying that Councillors can find their answers to questions somewhere on the website. Mr. Cotterill said that he feels they have been very responsive and offered meetings and presentations and tried to produce documents as requested, even though maybe not as quickly as some have wanted. He said that it is not his expectation that Councillors should have to wade through several

documents on the website to find answers to questions. Councillor B. Mahern said that this makes his point that this process should not be rushed so quickly that it also puts undue pressure on the administration to provide those documents.

Councillor B. Mahern said that the minority caucus has only been provided one resource in reviewing this deal, through the retention of attorney Andy Mallon. He asked for those lawyers or financial consultants in the audience who have been retained by the city or CEG to raise their hands. Chairman Lutz said that he is sure there are many involved in the transaction in the audience, as those with expertise in each area have been asked to attend in order to answer questions. Several audience members raised their hands. Councillor B. Mahern said that his point is that the administration and CEG have many advisors on this transaction, and the minority caucus members only have one counsel.

Councillor Sanders said that she understands Mr. Cotterill's perception, as he has probably been living and breathing this transaction for some time. However, Council members are not privy to the same communication as those doing the deals. She said that she is not talking about Powerpoint presentations given across the city, which only gave a 1,000-foot view of the transaction. She said that she is looking for spreadsheets and documents with concrete analysis to help them form an opinion about what to do with one of the city's most valuable resources. She said that she wants enough information to feel comfortable with her decision and to know she is not selling out the citizens of this city. She said that they have to do their due diligence, as they are elected to represent the residents of Marion County. She said that she sent a letter requesting information on April 28, 2010, and she still does not have a full response other than that they are working on it. She said that it is difficult to consider whether or not this is good for her constituents or not. On Friday, when she receives those documents, she will only have a weekend to review them, and with this being only a part-time job, it is hard to find the time to adequately prepare an opinion on short notice, when many of the individuals involved in this deal are working on it full-time.

Mr. Steele said that he is hired by the Council to work for all Councillors, regardless of party affiliation, and he has sat down with many Councillors, both Republican and Democrat, who have requested a meeting and more information. He said that members should feel free to ask him any questions they still have unanswered, and he would be happy to share the information he has received with each of them. He said that he would be glad to meet with the entire minority caucus if they should so wish in order to answer questions.

The motion to send Proposal No. 131, 2010 to the full Council with a "Do Pass As Amended" recommendation carried by a vote of 5-3, with Councillors Gray, Mansfield and Sanders casting the negative votes.

Chairman Lutz called for a ten-minute recess at 7:20 p.m. Chairman Lutz reconvened the Rules and Public Policy Committee at 7:30 p.m.

PROPOSAL NO. 132, 2010 - authorizes the issuance and sale of revenue bonds to procure funds to be applied to the costs of the construction, renovation, rehabilitation and installation of improvements to the public ways, including roads, streets, alleys, trails, sidewalks and other public facilities, appropriating the proceeds derived from the sale of such bonds, modifying the amount of payments in lieu of taxes payable by the sanitary district

Councillor Vaughn moved, seconded by Councillor McQuillen, to "Amend" Proposal No. 132, 2010 to change the PILOT cap in all instances where it occurs in the proposal from \$189 million to \$170 million. He said that this amendment is due to restructuring of the debt and the incorporation of some keen ideas by Mr. Steele.

Mr. Steele provided a handout on the PILOT bond structure (Exhibit A) and said that in the Administration and Finance Committee presentation, one bond structure was discussed, which is the fourth column (or first column with the heading "Tax Exempt") on the exhibit. He said that this structure was based on a tax exempt issue that would provide proceeds of \$140 million for projects. At an interest rate of 5.02%, the total bond amount would be \$175.1 million, with debt service reserve, capitalized interest and cost of issuance at \$35.1 million. He said that the total net debt service under this structure would then be a little over \$305 million. The cost to borrow that \$140 million would be \$165 million, and even though this was the worst-case scenario, he felt it was a little unrealistic. He referred to the first column with a structure using Build America Bonds (BAB) and said that this seems to be a more realistic approach. He said that the interest rate would be 4.38%, and the bond amount would be \$15 million less at \$165 million. The net interest cost on this structure would be \$133 million, which is less than the amount of the bond proceed. Mr. Steele said that if the cap is left at \$189 million and interest rates go up, the transaction could end up being done at a much higher interest cost, which he does not believe would be prudent. Reducing the maximum amount to \$170 million would make the deal more realistic and lessen the possibility of putting more interest out there to do the deal. Reducing the amount should also provide more annual excess tax increment financing (TIF) revenues that would be available for projects in future years and provide better coverage on the bonds.

Councillor Sanders asked how Mr. Steele figured the excess PILOT numbers. Mr. Steele said that he received a summary of proposed cash flow projections provided by Citigroup, who will be doing the bond sales. He said that in this summary, in their annual debt service payments, they show what is required for debt service, what the PILOT amount is, and then the difference, which is excess PILOT available. He said that he would be happy to share those individual spreadsheets with Councillor Sanders if she would like to see them.

Councillor Cockrum said that he only saw two places in the ordinance where the cap amount is listed, in Sections 2 and 3. He asked if these are the only two places that number appears. Mr. Elrod responded in the affirmative.

Councillor B. Mahern asked if a portion of this analysis was then done by the organization that will be overseeing the sale of the bonds. He asked what portion was done by them and if any independent analysis was done. Mr. Steele said that Citigroup prepared a spreadsheet, and he prepared this exhibit as an independent analysis using those numbers. He said that the cost of issuance is roughly 1% of the bond proceeds, which is the fee to the underwriters and people who sell the bonds, and there is some reimbursed cost associated with the issuance of the debt. Councillor B. Mahern asked if there is a disinterested third party involved. He said that it helps having people who are not part of the deal looking at the prudence of it, instead of just taking their analysis and formulating other alternatives. Mr. Steele said that when he first saw the analysis, he felt that due to the cash flow of the excess PILOT, which starts low and works its way up, and the capitalized interest and debt structure continuing to increase, they were paying a lot of interest at the tail end. He said that if they had a level debt service, that would be different. In an effort to force them to do a more efficient transaction, level that out and lower the interest payments, he suggested reducing the bond size. Councillor B. Mahern asked who they are forcing to do a more efficient transaction. Mr. Steele said that the intent all along has been to do an efficient transaction, but this would force the bond bank and the underwriters to be even more efficient. Deron Kintner, executive director of the Indianapolis Local Public Improvement Bond Bank, said that the document submitted in March or early April was essentially a worst-case scenario. He said that bond issuances are market-driven, and they do not know what the market will be like in June, when the bonds will potentially be issued. He said that they asked Citigroup to supply numbers to provide them with flexibility in case the market headed south before the transaction took place. He added that every bond issue that comes before the Council is worded with some flexibility so that they do not have to come back to the Council for a second approval if the market shifts. He said that the bond bank worked with Mr. Steele to nail down more specific scenarios and structures and are comfortable they will work with where they believe the market will be at the time of the transaction. Councillor B. Mahern asked if Citigroup provided these numbers. Mr. Kintner said that they did, but that both bond bank personnel and Mr. Steele have the expertise to know if it was a proper analysis or not. Councillor B. Mahern said that he has concerns about people involved in the financial transactions and beneficiaries of the proceeds providing the numbers, and he asked if they do not have any other safeguards in place with outside analysis by individuals with no connection to the transaction. Mr. Kintner said that this is the way every bond issuance is handled, and his office, as well as Mr. Steele, has the expertise to know if the numbers are realistic or not. Chairman Lutz stated that the Council relies on advisors such as Mr. Steele, in whom he has great faith, to give an objective analysis. He asked Mr. Steele to share how long he has been in this business. Mr. Steele said that he began as the city controller in Anderson in 1980, also served several years as the city controller for Indianapolis, and was the executive director of the bond bank for three and a half years. He said that he is quite confident that the bond bank will do an excellent job and has the expertise to evaluate any outside analysis. Chairman Lutz asked if it is normal practice to hire outside

advisors in a large transaction. Mr. Steele said that it would be prudent to do so if they did not have the expertise themselves.

Councillor Vaughn's motion to "Amend" Proposal No. 132, 2010 to lower the PILOT cap to \$170 million carried by a vote of 8-0.

Councillor Vaughn moved, seconded by Councillor Rivera, to send Proposal No. 132, 2010 to the full Council with a "Do Pass As Amended" recommendation.

Councillor Mansfield asked Jeff Roeder, Assistant Chief of Staff, Mayor's Office, in light of the newspaper reporting that only \$3.6 million would be going toward sidewalks, to share with the committee information he shared with her during the break regarding today's announcement that made it appear some of these PILOT funds would be used to demolish abandoned housing. Mr. Roeder stated that no dollars from this PILOT funding will be spent on abandoned homes. These funds are specifically targeted for use on streets, sidewalks and resurfacing. Mr. Sherman added that with needs above the \$140 million, they tried to choose projects based on a Priority One and Priority Two basis. He said that the list of projects is formulated and prioritized according to councillors' requests, Mayor's Action Center (MAC) calls, and engineering inspections. He said that they evaluate these projects very thoroughly and are currently working on a pavement index. The last time a pavement index was done was in 2000, and they will have an inventory of all main streets by the end of the year. He said that there are over 420 miles in Marion County, and a physical inspection of every inch of it is not realistic. Something that is on the priority list today may be bumped by something else found to be more of a priority. He said that they have identified the most appropriate projects and do have a projected list, with the understanding that there may be some adjustments. He added that they are also planning \$100 million in sanitary work this year. Councillor Mansfield asked if the list summarized in the newspaper was accurate. Mr. Sherman said that the newspaper listed some random projects and not all of them. Councillor Mansfield asked if it was an accurate depiction that \$3.6 million would be spent on sidewalks. Mr. Sherman said that this is a fair estimate. He said he can provide committee members with a copy of the list of projects at this time. Councillor Mansfield asked if this list is a moving target. Mr. Sherman said that it should not change much, and will remain pretty consistent due to complaints and calls and priorities established. He said that they have \$180 million of projects needed, and they hope to achieve some savings in street work. He said that with the stimulus package funding, they were able to get \$30 million of work out of the \$22 million awarded, due to some efficiencies and cost savings, and they hope to do the same with these dollars.

Councillor Sanders asked if they have taken another look at the priority list and discussed it with the 25 district Councillors. Larry Jones, Deputy Director, DPW, stated that they did take into consideration the lists provided from all Councillors regarding the projects they had identified for their district. He said that this is one of the ways projects are added to the inventory. Councillor Sanders said that several Councillors have a series of lists, but some of those lists are three and four years old. She asked if they

have sat down with Councillors to discuss their lists and discover current priorities. Mr. Jones said that they have not met with the 25 Councillors individually. Chairman Lutz asked if they would have any objection to doing that. Mr. Sherman said that they would not object to that. He said that they have received a lot of input from Councillors in this process, and as public servants, they are prioritizing projects to get the biggest result and cause less damage to roads, while using the money wisely for preventative and predictive results, since this is a one-time shot and quick fix. He said that they could pay \$700 million on sidewalks, but then have roads full of potholes. He said that it is their responsibility to look at the net cost to customers. He said that the net cost if they do nothing is taking the water debt and charging people for that debt. He said that if IWC stays under the city, they project, due to payment of debt, that a customer would be paying an average of \$107 per month in 2025, whereas CEG, with the sale, projects that monthly rate to be as low as \$66 a month in 2025. He said that with regard to savings, instead of building 30-foot tunnels, they are building 18 to 20-foot tunnels, which keeps the cushion on the PILOT a little lower. He said that they were going to build projects at a cost of \$185 million that had never been built before, and they bid it at \$54 million for savings. He said that they try to spend enough time to prudently get the biggest bang for the dollar.

Councillor Mansfield asked if these revenues are dependent upon the sale to CEG. Mr. Sherman said that the PILOT is a payment in lieu of taxes, and it will increase like taxes. He said that they came up with savings and brought the PILOT cushion down. Councillor Mansfield asked if the PILOT is specifically related to the transfer or if it could stand on its own. Mr. Sherman said that if Councillor Mansfield is asking if they could do this even if the transaction fell through, then the answer is yes.

Councillor B. Mahern said that Mr. Sherman mentioned that they could do this without the sale of the IWC and have the ability to pay for this increase. He asked if it is fair to say that the PILOT represents essentially the same thing as property taxes for those entities who do not pay property taxes. Mr. Sherman said that this is correct, and it is essentially the same thing they have been doing in using a PILOT to pay for public safety. Councillor B. Mahern asked when the last time this PILOT amount was raised. Chairman Lutz said that he believes it was in 2004. Councillor B. Mahern asked if they are using these funds for the same things that property taxes usually pay for, and if they are payments in lieu of taxes, then would this not essentially be a tax increase. Mr. Sherman said that he would not call it a tax increase, but would instead characterize it as a rate reduction. He said that they are using this as a way to pay for the outstanding debt and provide a net rate reduction that they could never provide themselves. Councillor B. Mahern said that they are discussing this PILOT outside of the transfer. Mr. Sherman said that with the transfer, though, the debt is taken on by someone else. Councillor B. Mahern said that this proposal simply approves the issuance of bonds, and the sale has not yet been approved and may not happen. He said that this proposal will move forward with greater speed than the transfer transaction, and if this proposal is approved, the city will have \$140 million in bond proceeds that are funded by increases in the PILOT, which are essentially property taxes that would be paid if the

entity that held those assets paid property taxes. Mr. Sherman said that they are simply trying to monetize the savings accomplished through value engineering. Councillor B. Mahern said that the amount of money paid by the entity that holds these assets will be greater, because the assets are going up in value. He said that Mr. Sherman keeps referring to the savings. Mr. Sherman said that the Council approved the 10.75% rate over five years so that the city could build the sanitary program. They have now determined that, based on the reduction because of that value engineering, they can within that same framework afford, without increasing rates for the taxpayer, to do this bond issuance. Councillor B. Mahern said that Mr. Sherman is characterizing this as a rate reduction, but it is more a matter of choosing not to pass along the savings that have been realized to the ratepayer. Mr. Sherman said that the savings makes the cushion bigger for the bond issuance. Councillor B. Mahern asked why the savings cannot just flow through the budget or be returned to the ratepayer through lower rates. Mr. Sherman asked if Councillor Mahern then simply wishes to leave the streets and sidewalks in disrepair. Councillor B. Mahern said that his point is that this savings cannot really be counted as savings because it is money that is being spent on this bond issuance and project costs.

Councillor Sanders said that she was of the impression that the current PILOT increase was through the year 2013, and that in order to increase it after that, the Council would have to take action to increase the PILOT and fees. Mr. Sherman said that if they were not adding more tunnels, the \$140 million would be well within the 10.75% rate. If the sale does not take place, in 2014, there will have to be a rate increase for tunnel construction. That rate increase would be less than it would have been if they do not add all the construction projects, because the savings is already there. Councillor Sanders asked if the PILOT payment schedule is related to the sale. Ray Kljajic, Citigroup, said that the PILOT projections were done by RW Beck, independent consultant to the city with expertise in PILOT payments. He said that RW Beck worked off the appraisal of the wastewater system asset at the current snapshot value. The payment schedules were derived by those professionals, and those schedules were used to produce the PILOT financing numbers and analysis Mr. Steele referenced. Mr. Steele added that this schedule is based on a projected PILOT payment based on new construction at the wastewater facility. The actual tax rate that can be used to establish the annual amount is based on the tax rate approved by the Council, which is approximately \$1.52. That schedule is based on a tax rate of \$1.21. Councillor Sanders asked if the schedule is based on a tax rate of the appraised value of the asset, but is not related necessarily to the fees generated by the sewer system. Mr. Steele said that it is based on the projected net taxable value of the assets of the wastewater treatment system in future years, assuming a tax rate of \$1.21, which is considerably less than what they could charge under the statute. This number was determined by what they could anticipate in the future whether the utility is sold or not sold. This is the same schedule that appears in the MOU with CEG and is what CEG is willing to pay the city in the future for the PILOT after they go to the IURC and can build that schedule into the rates. Under the statute, they could legally charge more than that.

Councillor B. Mahern asked if the amount of money raised will be offset by the savings, not resulting in a rate increase, but further asked if it is at the discretion of CEG at the approval of the IURC that could result in greater amounts paid by the ratepayers. Mr. Steele said that the anticipated synergies in excess of \$40 million a year are more than sufficient to pay the PILOT increase and the debt service associated with the acquisition of the wastewater utility. Rates will still be lower in the future, even assuming these annual payments, than they would be if the Council does nothing. Councillor B. Mahern said that PILOTs are based on the value of the property, and the value of the property as he understands it is going to appreciate, in no small part due to rate increases that the Council approved. He said that they do not know what the value of the property will be in 2018, but are saying that the amount of the PILOT will be over \$22 million. Mr. Steele said that this is not totally correct. He said that expenditures for the future construction of the wastewater facility have been projected for each year to meet the Environmental Protection Agency (EPA) requirements. Based on those projected expenditures, they have looked at the net taxable value and used the \$1.21 tax rate to calculate the PILOT payment. He said that if they do not construct as much as planned, they will still have a slight cushion because they used a rate of \$1.21, and they could, by law, use a rate as high as \$1.52. Councillor B. Mahern asked if they could choose to do less construction, because that would be at their discretion. Mr. Steele said that it would not be at their discretion, because they have to comply with EPA mandates. Mr. Sherman said that because of savings already realized and work that has been done, the estimated \$3.8 billion in expenditures is probably now \$2.9 billion. Mr. Sherman said that Councillor B. Mahern understands this process because of what he does in his profession. Councillor B. Mahern said that there will be a bond issued against this, and they will use these payments to service that bond. Mr. Sherman agreed and said that in response to Councillor Mahern's question of why they are expediting this process, it is to get the construction schedule going and create jobs, while taking advantage of lower market rates. Councillor B. Mahern said that the rush to do something because it is too good a deal to pass up is not the reason to do something. Mr. Sherman asked if he is referring to the PILOT or the whole transaction. Councillor B. Mahern said that it is important to step back when presented with a good deal and evaluate if it is worth it. He said that by enacting this proposal, they are saying they are going to issue bonds, and that they anticipate sufficient PILOT payments to cover that debt. If the PILOT payments are insufficient to cover the bonds, he asked how the city intends to cover that. Mr. Kljajic said that there is a provision in the MOU, irrespective of the construction schedule that is driven by the consent decree, that as part of the negotiation, CEG is guaranteeing that schedule. Unlike a normal PILOT, where the city would be at risk, the MOU provides that CEG guarantees those payments, and the city would not be at risk. Mr. Sherman said that the commitment has already been made to comply with the consent decree and the continuation of Septic Tank Elimination Program (STEP) projects, but he is taking personal responsibility in pushing for the \$140 million now, because he can then respond to many outstanding needs sooner. Mr. Steele referred to Councillor Mahern's question regarding the PILOT being less or construction being less, and said that under the most likely scenario with the issuance

of this debt, during the debt service payment of debt, there is \$142.7 million of excess PILOT not needed for the debt service that can be used for pay-as-you-go projects. Councillor B. Mahern said that this is based upon certain assumptions in savings. He stated that in discussing this, he is clearly not comfortable with the transfer of the utility, and there have been continual references to CEG guaranteeing this amount and that the savings will produce this excess PILOT money. He said that he does not see how they can approve this without the utility deal being approved, and it is not fair to discuss this in light of that pending proposal, because this proposal will move along on a different track than the transfer transaction. He said that it is being testified that this transaction can stand alone, yet then more testimony is given that payments are guaranteed by the deal with CEG.

Councillor Vaughn said that in the simplest terms, a rate is charged for a utility which generates "x" amount of money. That money was to pay for projects that the city originally thought were going to cost \$3.9 billion, and are now going to cost \$2.9 billion. The cushion from this savings realized is sufficient to pay the debt service on this PILOT whether the transfer to CEG happens or not, and that is why this deal is able to stand on its own. If the transfer does take place, the decision is made even that much better. Councillor B. Mahern said that he appreciates Councillor Vaughn's comments, but the representations made to alleviate his concerns were made by folks who represent Citigroup and Mr. Steele, and they referenced the deal specifically. Councillor Vaughn said that they referenced both, because Councillor Mahern asked about both. He said that Councillor Mahern has asked the same question over and over five times in seven different ways in the last three hours, and he does not know how else they can answer his question. He said that it seems Councillor Mahern will simply be perpetually unsatisfied with any answer given. Councillor B. Mahern said that he wants Mr. Steele to answer the question as to whether the assumptions in this payment schedule are dependent upon the sale of the assets. Mr. Steele responded in the negative.

Chairman Lutz said that he has let the conversation run a little more loose than he would like, because he wanted to allow for liberal discussion on this issue. However, discussion is now getting repetitive, and the hour is getting late, and he asked Councillors to be mindful of each others' time.

Councillor Sanders said that she cannot support this proposal because she feels it is putting the cart before the horse. She said that, with all due respect to Mr. Steele, she appreciates that he understands this bond issuance, but she cannot support it at this time, and would like to see it postponed until after the definitive agreement is approved.

Councillor Rivera said that he never realized how conservative the Democrat members of this committee were and he appreciates their concern for the citizens.

Chairman Lutz called for public testimony.

Pat Andrews, MCANA, stated that MCANA also considered this proposal and feels this is not the right approach. She said that any savings should go to the benefit of the ratepayers. She said that Mr. Sherman has done a phenomenal job in altering the CSO plans to cost less, but it is not really savings, but is rather just less that they have to pay. She added that they are concerned about the dedication of funds. She said that every time the promise that the \$5 million generated by the increase in the County Option Income Tax (COIT) going toward crime prevention comes up in discussion, Councillor Vaughn is forthright in pointing out that there was no language written into the ordinance that dedicated those funds. She said that without adding language about the dedication of funds, the next administration or Council could say that this is not what they promised and could change the use of those funds. She said that dedicating these funds specifically for these projects is of paramount concern to MCANA. She said that with her simple math skills, in looking at the PILOT payment schedule, it looks as though within 10 years, they already have the \$140 million paid, and the other 20 years of payments are going toward interest and fees, and therefore the bulk is not going toward streets and sidewalks, but rather to the financing of bonds. She said that it is short-sighted to be spending this money in four years but taking 30 years to pay it off. She said that she opposes the proposal.

The motion to send Proposal No. 132, 2010 to the full Council with a "Do Pass As Amended" recommendation carried by a vote of 5-3, with Councillors Gray, Mansfield and Sanders casting the negative votes.

Councillor Gray asked for consent to explain his vote. Consent was given. Councillor Gray said that his vote is not as a Democrat or Republican or a vote against the Mayor, but a vote for his constituency. He said that they have greater problems in his district than streets and sidewalks, including some areas that have third-world conditions and horrible water problems. He said that they were promised some stimulus money to remedy this, but then it was pulled and used for something else. He said that there are areas still without safe drinking water, and the only library in his district is one of those slated for closing. He said that he, therefore, has bigger issues to be concerned about, and until he can get some type of resolution offered to those issues, he will continue to oppose these transactions.

There being no further business, and upon motion duly made, the Rules and Public Policy Committee was adjourned at 8:32 p.m.

Respectfully Submitted,

Robert Lutz, Chairman

PILOT Bond Structure (In Millions)

<u>Structure</u>	<u>BAB</u>	<u>BAB</u>	<u>BAB</u>	<u>Tax Exempt</u>	<u>Tax Exempt</u>	<u>Tax Exempt</u>
Interest Rate	4.38%	4.34%	4.30%	5.02%	5.02%	5.02%
Bond Amount	165.08	157.01	148.67	175.10	167.03	159.29
Res., Cap. Int., COI	25.08	22.01	18.67	35.10	32.03	29.29
Bond Proceeds	140.00	135.00	130.00	140.00	135.00	130.00
Total Net Debt Svc.	273.00	260.41	247.31	305.16	292.55	280.24
Net Interest Cost	133.00	126.41	117.31	165.16	157.55	150.24
Excess PILOT	142.67	155.26	168.36	110.50	123.11	135.42

Build America Bonds - BAB

Debt service reserve, capitalized interest and cost of issuance - Res., Cap. Int., COI